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**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

**Ainsworth Unit
Sandhills Division
Pick-Sloan Missouri Basin Program, Nebraska**

**CONTRACT BETWEEN THE UNITED STATES AND
THE AINSWORTH IRRIGATION DISTRICT**

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**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Ainsworth Unit
Sandhills Division
Pick-Sloan Missouri Basin Program, Nebraska**

**REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
THE AINSWORTH IRRIGATION DISTRICT PROVIDING FOR A PROJECT
WATER SUPPLY AND FOR REPAYMENT AND OPERATION AND MAINTENANCE
OF THE PROJECT WATER SUPPLY AND DISTRIBUTION SYSTEM**

THIS CONTRACT, made this _____ day of _____, 2006, between the UNITED STATES OF AMERICA, hereinafter called the "United States," acting through the Secretary of the Interior, pursuant generally to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly, but not limited to, Section 9(d) of the Act of August 4, 1939 (53 Stat. 1187), as amended and supplemented, the Act of December 22, 1944 (58 Stat. 887), and the Act of July 2, 1956 (70 Stat. 483), all collectively known as the Federal Reclamation laws, and the AINSWORTH IRRIGATION DISTRICT, an irrigation district organized and existing pursuant to the laws of the State of Nebraska, with its principal place of business in Ainsworth, Nebraska, hereinafter called the "District" or "Contractor". The United States and the District hereinafter are referred to collectively as the "Parties".

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

a. WHEREAS, the Pick-Sloan Missouri Basin Program (P-SMBP) was authorized under the Flood Control Act of December 22, 1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as revised and coordinated by Senate Document 247, 78th Congress, Second Session; and

b. WHEREAS, on August 21, 1954 in accordance with Public Law 612, 83rd Congress, 2nd session (68 Stat. 757), the Ainsworth Unit (Unit) was authorized under the P-SMBP; and

c. WHEREAS, pursuant to the Act of May 18, 1956 (Public Law 531, 84th Congress, 2nd session) the United States constructed the Unit which is situated in Cherry, Brown, and Rock Counties in Nebraska for employment of a part of the waters of the Snake River, a tributary of the Niobrara River; and

d. WHEREAS, the Parties hereto have entered into Contract No. 7-07-70-W0043, formerly 14-06-700-1218, dated September 12, 1956, as amended, hereinafter called the “1956 contract”, for furnishing of a Project water supply and for construction, operation and maintenance, and repayment of the District’s distribution and drainage facilities; and

e. WHEREAS, Part “A” of the 1956 contract will expire December 31, 2006; and

f. WHEREAS, the District has requested conversion of Part “A” of the 1956 contract to a repayment contract pursuant to the Federal Reclamation laws and the laws of the State of Nebraska, and has fulfilled its obligations to date under Part A of the 1956 contract; and

g. WHEREAS, the United States agrees to convert Part “A” of the 1956 contract to a repayment contract pursuant to applicable Federal laws, rules and regulations, and state laws, particularly Section 9 (d) of the Reclamation Project Act of 1939 (53 Stat. 1187) and the Act of July 2, 1956 (70 Stat. 483) which is entitled Administration of Contracts under Section 9, Reclamation Project Act of 1939, and

h. WHEREAS, Part B of the 1956 contract would not otherwise expire, but the United States and the District desire to supersede and replace its provisions by this Contract for ease of contract administration; and

i. WHEREAS, the 1956 contract provided, among other things, for the United States to construct water supply and distribution facilities, and provided for the District to repay portions of the costs of constructing, operating and maintaining these facilities, and the United States and the District desire to continue this relationship and provide for a finality of the capital payments toward these facilities.

j. WHEREAS, subsequent to the execution of this Contract, the Parties, by mutual agreement, wish to clarify through a contract administration memorandum their understanding of how certain provisions of this Contract will be administered so that officials of the Parties will have a record of such understandings for future use in administering this Contract pertaining to repayment and reserve fund obligations, and other contract articles.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

GENERAL DEFINITIONS

1. Where used in this Contract, the terms:

a. “1956 contract” shall mean the specific contract the Parties hereto entered into September 12, 1956, which is numbered Contract No. 7-07-70-W0043 (formerly 14-06-700-1218), as amended.

b. “Contract” shall mean and include Articles 1 through 34 hereof.

c. “Contracting Officer” shall mean the Secretary of the United States Department of the Interior or the Secretary’s duly authorized representative.

d. “Distribution works” shall mean all works beyond the canal turnouts in the Ainsworth Canal for the distribution of water to such tracts of irrigable acreages within the District as the Secretary and the District may determine and for certain drainage works, together with all facilities appurtenant to all such works, also any Project headquarters buildings and machinery and equipment for operation, maintenance and replacement as may be determined by the Secretary and the District.

e. “District lands” shall mean the irrigable lands of the District upon which the District water supply may be put to beneficial use, as contained in the official records of the Contracting Officer and the District, which lands may be modified through inclusions and exclusions as provided herein.

f. “District water supply” shall mean that portion of the total water supply of the Snake River, a tributary of the Niobrara River, available through the works of the Unit from all natural flow of the Snake River, its tributaries, and from storage in Merritt Reservoir, as appropriated under the laws of the State of Nebraska for use on District lands, not to exceed, however, the amount of water that may be used beneficially on up to 35,000 acres of irrigable lands of the District and subject to the provisions of Article 3 hereof.

g. “District’s remaining Distribution works construction charge obligation” shall mean the remaining unpaid reimbursable Distribution works costs of the District after taking into account payments which were made and/or scheduled to be repaid by the District through December 31, 2006 under the 1956 contract.

h. “District’s water supply repayment obligation” shall mean the portion of the remaining unpaid water supply costs of the Ainsworth Unit allocated to irrigation (\$16,736,922 as of September 30, 2005) which the District shall repay under the terms of Article 5 of this Contract.

i. “Federal Reclamation laws” shall mean the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto.

j. “Irrigation season” shall mean the period within any year May 1 through September 30, or such additional period from April 1 through November 15 of each year as may be agreed upon in writing between the United States and the District.

k. “Operation, maintenance, and replacement costs (OM&R)” shall mean those expenses incurred in connection with the water control, operation, maintenance and replacement of the Project works, including appropriate charges for associated indirect costs and administration as determined by the Contracting Officer, and shall include such additional costs as hereinafter provided. Such expenses shall include those required to remedy conditions

brought about by ordinary use of the Project works or to restore or replace components of the existing Project water facilities and shall not include expenses to increase or enlarge such works beyond the purposes for which they were originally authorized and constructed.

l. “Project” shall mean the Ainsworth Unit of the Pick-Sloan Missouri Basin Program.

m. “Project works” shall mean all of the works defined as Water supply works and Distribution works.

n. “Transferred Water supply works” shall mean all of the works defined as Water supply works.

o. “Water supply works” shall mean Merritt Dam and Reservoir, Ainsworth Canal, and all works appurtenant thereto.

p. “Water supply repayment period” shall mean the 40-year period beginning with the year in which the first water supply capital payment is made pursuant to Article 5 hereof.

q. “Year” shall mean the period January 1 through the following December 31.

EFFECTIVE DATE AND TERMINATION OF 1956 CONTRACT

2. This Contract shall become effective January 1, 2007, and on that date shall supersede and replace the 1956 contract in its entirety.

WATER SUPPLY WORKS - WATER TO BE FURNISHED TO THE DISTRICT

3. The United States has constructed Merritt Dam and Reservoir for the purposes of irrigation, recreation, and fish and wildlife purposes. The purpose for which water is furnished under this Contract is irrigation. For each Irrigation season, the United States shall deliver to the District the District water supply and the District shall make payments for the repayment of the construction costs of the Water supply works pursuant to the provisions of Article 5 herein. All water deliveries under this Contract shall be in accordance with applicable State and Federal law and shall be limited to the amount of water that may be beneficially used on up to 35,000 acres of irrigable lands of the District. Water deliveries if available shall be made at such times during the Irrigation season and in such quantities, within the capacity of the Project works, to the District at the point of measurement as specified in Subarticle 10a, as follows:

a. The quantity of water to be supplied to the District regardless of the reservoir elevation shall be 84,949 acre-feet, if available.

b. Water in addition to the 84,949 acre-feet, if available, will be delivered to the District during each Irrigation season at the request of the District, in any total amount

available provided that these releases will only be made during periods that the reservoir elevation is above El. 2923.50 feet or as adjusted in Subarticle 3c below.

c. It is specifically provided that water releases may be made to the Snake River by the District at the direction of Reclamation for the enhancement of brown and rainbow trout, water quality, wildlife and overall aquatic life in the river. The minimum pool elevation of El. 2923.50 feet, as referenced above, will be adjusted downward for such releases in excess of 2,000 acre-feet to the Snake River that occur during the Irrigation season. This adjustment will be limited to the total quantity of such releases in excess of 2,000 acre-feet beginning on the date the reservoir elevation falls below El. 2946.0 feet and remains below El. 2946.0 feet through the Irrigation season.

d. The United States reserves the right to make any releases necessary to protect the Project facilities and the public in accordance with appropriate safety procedures.

DISTRIBUTION WORKS

4. a. The United States has constructed the Distribution works, for the benefit of distributing water to and draining water from District lands. The District shall repay the unpaid costs of these Distribution works in accordance with the provisions of Article 6 herein.

b. The United States and the District recognize that drainage works in addition to those that have been constructed pursuant to Subarticle 4a, may be required from time to time for the preservation of the District lands. The District, without further cost to the United States, shall undertake such additional drainage works as the Contracting Officer, after consultation with the District, determines to be necessary. Such drainage works, when constructed, shall be considered to be a part of the Distribution works.

DISTRICT'S WATER SUPPLY REPAYMENT OBLIGATION

5. a. The District shall repay the District's water supply repayment obligation through payment of the charges described in Subarticles 5b and 5c through annual installments. The annual installments will be paid in semi-annual payments as described in 5d.

b. The District shall annually make a base payment of \$11,000 from the effective date of this Contract through the Year 2016. The annual base payment shall be \$40,000 beginning in Year 2017 through Year 2018. Beginning in the Year 2019 through the Year 2046, this annual base payment shall be \$117,000. It is the intention of the Parties that the increase in the annual base payment may occur in the Year following the final repayment of the capital costs of the Distribution works under Article 6 of this Contract; and that if for any reason the final payment is delayed, the change in the base payment may be likewise delayed to coincide with the year following the delayed final capital payment for the Distribution works. The Parties agree that any base payments that are in excess of the calculated ability to pay of the District are made in part in consideration of the conversion of Part A of the 1956 contract to a repayment

contract pursuant to Subsection 9(d) of the Reclamation Project Act of 1939. The Parties further agree that notwithstanding the future determinations regarding ability to pay, the annual base payments set forth herein shall not be reduced. This base payment is based on a maximum service available Project acreage of 35,000 acres.

c. The District shall also repay such additional sums against the Water supply works costs as may be within the District's ability to pay as determined by the Contracting Officer in accordance with then current Reclamation policy; Provided, That such additional payment shall not be assessed unless and until the District's ability to pay exceeds the base payment stated in Subarticle 5b above, at which time the District's annual water supply payment shall be the sum of the base payment stated in Subarticle 5b above plus an ability to pay payment which shall be the net amount by which the District's determined ability to pay exceeds the District's base payment in Subarticle 5b above. The Parties agree that the District does not have any ability to pay at the time of the execution of this Contract.

d. Each annual installment of the District's water supply repayment obligation as provided in Subarticles 5b and 5c shall be paid in semi-annual payments with one-half on or before July 1 and one-half on or before December 31 of the year in which it is due.

e. The Parties agree that the District's water supply repayment obligation for the existing Water supply works shall be fully satisfied upon fulfillment of the payments provided in Subarticles 5b and 5c, and that these payments shall constitute full and complete payment of all sums required by law of the District for the capital repayment of the existing Water supply works, and that no capital payments beyond the Water supply repayment period shall be due from the District for repayment of the existing Water supply works.

DISTRICT'S DISTRIBUTION WORKS REPAYMENT OBLIGATION

6. a. The United States has made reimbursable expenditures of \$8,527,726 for construction of the Distribution works. The 1956 contract fixed the amount to be repaid by the District at \$6,700,000 and as of December 31, 2006 the amount scheduled to be repaid is \$5,025,000; and the District shall repay to the United States, as scheduled, the remaining unpaid balance of \$1,675,000. This unpaid balance is hereinafter called the "District's remaining Distribution works construction charge obligation." The District shall repay the District's remaining Distribution works construction charge obligation through annual installments in accordance with the payment schedule in Attachment A, which is attached hereto and made a part hereof.

b. Each annual installment of the District's remaining Distribution works construction charge obligation shall be paid in semi-annual payments with one-half on or before July 1 and one-half on or before December 31 of the year in which it is due.

c. The Parties agree that the District's repayment obligation for the existing Distribution works shall be fully satisfied upon fulfillment of the payments provided in Subarticle 6.a, and that these payments shall constitute full and complete payment of all sums

required of the District by law for the capital repayment of the existing Distribution works, and that no other capital payments shall be due from the District for repayment of the existing Distribution works.

DISTRICT'S RESERVE FUND OBLIGATION

7. a. Commencing on the effective date of this Contract, the District shall accumulate and maintain a reserve fund. The District shall establish and maintain that reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service, or for purposes outlined in Subarticle 7d below.

b. On the effective date of this Contract, the District shall deposit the sum of \$60,000 into the reserve fund, and shall annually deposit into the reserve fund the sum of \$26,250 from the effective date of this Contract through the year 2016. The annual reserve fund payment shall be \$96,250 beginning in Year 2017 through Year 2018. Beginning in the Year 2019, annual deposits to the fund shall be \$122,500. It is the intention of the Parties that the initial increase in the reserve fund annual deposits may occur in the year following the final repayment of the capital costs of the Distribution works under Article 6 of this Contract; and that if for any reason the final payment is delayed, the initial increase in the reserve fund annual deposits shall be likewise delayed to coincide with the year following the delayed final capital payment for the Distribution works. The annual deposits will be made to a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 7.d herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of \$3,945,000 is accumulated. Following an expenditure from the fund, the annual deposits shall continue from the year following the expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance or the basic amount, whichever is greater, is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

c. Upon mutual agreement between the District and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the Project; the size of the annual OM&R budget; additions to, deletions from, or changes in Project works; and OM&R costs not contemplated when this Contract was executed.

d. The District may make expenditures from the reserve fund only for:
1) extraordinary OM&R; 2) ordinary OM&R incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water supply to the District; 3) additions and/or modernization, including, but not limited to, activities which improve the operation, reduce the need for future maintenance, and modify and improve the operating efficiencies of the Project works. Reserve funds may be used for previously planned activities involving these types of costs, or for these types of costs

incurred during emergency actions necessitated by periods of special stress as described in item 2) above. The Parties agree that the fund shall be used to make extraordinary repairs, replace, and renew Project facilities to assure that the Project works remain in a state which will allow the Project as a whole to operate efficiently, appropriately, and in accordance with advancements in irrigation program technologies; and 4) for payment of annual construction charges to the United States at times when payment of such charges would otherwise cause undue burden on the District's water users; such as, but not limited to, periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, the District shall restore that balance by the accumulation of annual deposits as specified in Subarticle 7b herein.

e. Expenditures of less than \$10,000 of the current balance per emergency event from the fund for emergency actions on Transferred works may be made by the District without prior consent of the Contracting Officer. Emergencies are defined as sudden occurrences that would not normally develop over a period of weeks and would involve imminent loss of life or property. The Contracting Officer shall be given written notice within 48 hours of any emergency expenditure not initially authorized in writing. All other proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Except for emergencies, all expenditures shall be in accordance with: a plan of action developed by the District in cooperation with the Contracting Officer, State law, and sound and accepted accounting practices and procedures.

f. During any period in which any of the Project works are operated and maintained by the United States, the District agrees the reserve fund shall be available for like use by the United States.

g. On or before April 1 of each Year, the District shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

**DISTRICT'S OBLIGATIONS FOR OPERATION, MAINTENANCE AND
REPLACEMENT COSTS, ADMINISTRATIVE COSTS,
AND RELATED FEDERAL COSTS**

8. a. In addition to the charges and deposits set forth in Articles 5 through 7 of this Contract, the District shall also pay the costs outlined in (1) and (2) below. All such costs shall be paid annually in advance, one-half due on or before January 1 and the remaining one-half due on or before July 1 of each year. Payment shall be based on an estimate of such costs with adjustments made on the July 1 bill to reflect the actual costs of the previous year; Provided, That in order to avoid incurring a deficit in the funding of such costs, the Contracting Officer may bill the District for any projected deficit and the District shall pay such amount within 30 days after receipt of such notice thereof.

(1) The District's share, as determined by the Contracting Officer, of the annual

OM&R costs incurred by the United States on the Project works. For the first year of this Contract, this charge shall also include the District's share of any OM&R costs incurred under the 1956 contract which remain unpaid.

(2) Such costs which are not included under (1) above that the United States incurs for administration of this Contract which are properly chargeable to the District plus an appropriate share of the costs for administration, supervision, general expense and indirect costs as are properly chargeable to the District as determined by the Contracting Officer.

b. The Contracting Officer shall, to the extent practicable and foreseeable, inform the District of the estimate of the costs to be paid by the District in accordance with this Article for the District's use in its budgeting process.

OPERATION AND MAINTENANCE TRANSFER OF CERTAIN WORKS

9. a. On April 1, 1967, the Contracting Officer transferred to the District and the District assumed and undertook the care, OM&R of the Project works, as defined herein, to be utilized in the carriage and distribution of water to lands within the District's boundaries and for the drainage of District lands together with facilities appurtenant to such works. The District shall care for, OM&R all such works at its own expense, and without expense to the United States except as otherwise provided in writing. The District shall care for, OM&R all Project works for which it is responsible in full compliance with the Federal Reclamation laws, applicable rules and regulations, and the terms of this Contract, and in such a manner that the works shall remain in as good and efficient condition and of at least equal capacity for the carriage and distribution of irrigation water as at the date such OM&R activities were assumed by the District.

b. Moveable OM&R equipment transferred to the District as part of the Distribution works has become the property of the District; Provided, that in the event the United States should at any time resume the OM&R of any part of the Transferred works, the District's OM&R equipment shall be made available for use by the United States.

c. The District shall be responsible to comply with all terms set forth in Article 16 herein.

POINT OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DELIVERY OF WATER

10. a. Water to be delivered to the District pursuant to this Contract shall be delivered from Merritt Reservoir into the head gates of the Ainsworth Canal, which originates at Merritt Dam outlet works and extends eastward through the Sandhills to the Project lands. For the purpose of computing the amount of water furnished to the District, such water shall be

measured by the District at the head gates of the Ainsworth Canal with equipment owned and installed by the United States, with OM&R of this equipment the responsibility of the District. The Contracting Officer's determination as to such measurements shall be final.

b. The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water furnished to the District hereunder beyond the point of delivery as provided in Subarticle 10a, and the District shall hold the United States harmless on account of damage or claim of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond said point of delivery.

c. The United States reserves the right to claim all of the waste, seepage, or return flow derived from the water furnished pursuant to this Contract, and the same is hereby reserved and retained by the United States for use in a manner consistent with the provisions of State law.

RIGHTS TO BENEFICIAL USE OF WATER

11. a. Rights to the beneficial use of the District water supply shall be governed by the Federal Reclamation laws, other applicable Federal laws, and the laws and judicial decisions of the State of Nebraska, as the same may at any time apply to this Contract; but any such rights to beneficial use shall in no way extend or enlarge the rights of the District to the delivery of water through the Water supply works involved herein other than as provided in this Contract; *Provided*, That the right to delivery of water under this Contract shall not be abrogated so long as the District is not in violation of any of the provisions of this Contract, or in violation of applicable Federal laws, rules, or regulations or State laws.

b. No rights or interests in or to the District water supply other than to receive water annually pursuant to the terms and limitations of this Contract shall accrue to the District or to anyone claiming by, through, or under the District, by reason of any provision(s) of this Contract.

c. Rights to the beneficial use of the water provided hereunder shall not be diminished because of conservation activities, reductions in annual deliveries, or other water management practices to provide for carryover storage.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

12. a. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

b. If there is a condition of shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

STANDARD CONTRACT ARTICLES

CONTRACT DRAFTING CONSIDERATIONS

13. Articles 1 through 12 of this Contract have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

CHARGES FOR DELINQUENT PAYMENTS

14. a. The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the Contractor shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

c. When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

GENERAL OBLIGATION -- BENEFITS CONDITIONED UPON PAYMENT

15. a. The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

b. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water

available to the Contractor through Ainsworth Unit Project facilities during any period in which the Contractor is in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not deliver water under the terms and conditions of this Contract for lands or parties which are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--
PAYMENT OF MISCELLANEOUS COSTS

16. a. On April 1, 1967, the Contracting Officer transferred to the District and the District assumed and undertook the care, operation, and maintenance of the Project works. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

b. The Contractor, without expense to the United States except as otherwise provided in writing, shall care for, operate, and maintain the transferred works in full compliance with the terms of this Contract and in a manner that the transferred works remain in good and efficient condition.

c. Necessary repairs of the transferred works shall be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Contractor fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs shall be paid by the Contractor as directed by the Contracting Officer.

d. The Contractor shall not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer. The Contractor shall ensure that no unauthorized encroachment occurs on Project land and rights-of-way.

e. The Contractor agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this Contract, regardless of who performs those duties. The Contractor does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by

employees of the United States.

f. The Contractor shall cooperate with the Contracting Officer in implementing an effective safety of dam(s) program. The United States agrees to provide the Contractor and the appropriate agency of the State in which the Project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding between the United States and the State of Nebraska relating to the coordination of planning, design, construction, operation, and maintenance processes for dams and related facilities.

g. In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this Contract or the Contractor is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this Contract, then upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, and maintenance of the transferred works by giving written notice to the Contractor of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer the Contractor shall pay to the United States, annually in advance, the cost of operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, and maintenance of the works may be transferred back to the Contractor.

h. In addition to all other payments to be made by the Contractor under this Contract, the Contractor shall reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this Contract.

EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

17. a. The Contracting Officer may from time to time, examine the following: the Contractor's books, records, and reports; the Project works being operated by the Contractor; the adequacy of the operation, maintenance, and safety of dams programs; the reserve fund; and the water conservation program including the water conservation fund, if applicable. Notwithstanding title ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the Project works providing such interest to the United States.

b. The Contracting Officer may or the Contractor may request the Contracting Officer to conduct special inspections of any Project works being operated by the Contractor and special audits of the Contractor's books and records to ascertain the extent of any operation and maintenance deficiencies to determine the remedial measures required for their correction and to assist the Contractor in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to the

Contractor by the Contracting Officer.

c. The Contractor shall provide access to the Project works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

d. The Contracting Officer shall prepare reports based on the examinations, inspections, or audits and furnish copies of such reports and any recommendations to the Contractor.

e. The costs incurred by the United States in conducting operation and maintenance examinations, inspections, and audits and preparing associated reports and recommendations related to high- and significant hazard dams and associated facilities shall be nonreimbursable. Associated facilities include carriage, distribution, and drainage systems; pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road; regulating reservoirs (low hazard); fish passage and protective facilities, including hatcheries; river channelization features; rural/municipal water systems; desalting and other water treatment plants; maintenance buildings and service yards; facilities constructed under Federal loan programs (until paid out); and recreation facilities (reserved works only); and any other facilities as determined by the Contracting Officer.

f. Expenses incurred by the Contractor, as applicable, in participating in the operation and maintenance site examination will be borne by the Contractor.

g. Requests by the Contractor for consultations, design services, or modification reviews, and the completion of any operation and maintenance activities identified in the formal recommendations resulting from the examination (unless otherwise noted) are to be funded as Project operation and maintenance and are reimbursable by the Contractor to the extent of current Project operation and maintenance allocations.

h. Site visit special inspections that are beyond the regularly scheduled operation and maintenance examinations conducted to evaluate a particular concern(s) or problem(s) and provide assistance relative to any corrective action (either as a follow up to an operation maintenance examination or when requested by the Contractor) shall be nonreimbursable.

i. The Contracting Officer may provide the State an opportunity to observe and participate in, at its own expense, the examinations and inspections. The State may be provided copies of reports and any recommendations relating to such examinations and inspections.

CONFIRMATION OF CONTRACT

18. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Nebraska confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree,

the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This Contract shall not be binding on the United States until such final decree has been secured.

NOTICES

19. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the:

Regional Director
Bureau of Reclamation
Great Plains Region
P.O. Box 36900
Billings, MT 59107-6900

and on behalf of the United States, when mailed, postage prepaid, or delivered to the:

Ainsworth Irrigation District
Route 2, Box 82
Ainsworth, NE 69210

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

20. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

21. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION

22. While this Contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor

under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

23. The provisions of this Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

24. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions; water supply data; Project operation, maintenance, and replacement logs; Project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

25. The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation laws, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation laws.

ADMINISTRATION OF FEDERAL PROJECT LANDS

26. The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of Federal Project works may be used by the Contractor for such purposes. The Contractor shall ensure that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. The Contractor does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

b. The Contractor may, subject to the written approval of the Contracting Officer, issue permits, licenses, or similar land use documents only to the extent they do not grant an interest in Federal real property.

PROTECTION OF WATER AND AIR QUALITY

27. a. Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

b. The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Nebraska; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project water provided by the Contractor within the Contractor's Project Water Service Area.

c. This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

28. a. The Contractor shall not allow contamination or pollution of Federal Project lands, Project waters, or Project works of the United States or administered by the United States and for which the Contractor has the responsibility for care, operation, and maintenance by its employees or agents. The Contractor shall also take reasonable precautions to prevent such contamination or pollution by third parties.

b. The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal Project lands, Project waters, or Project works.

c. "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, and the regulations promulgated pursuant to that Act. In addition, hazardous material shall include thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

d. Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project water, or Project works, the Contractor shall initiate emergency measures to protect health and safety and the environment if necessary, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery

if it is an emergency and the first working day if it is a nonemergency.

e. If violation of the provisions of this Article occurs and the Contractor does not take immediate corrective action as determined by the Contracting Officer, the Contractor may be subject to remedies imposed by the Contracting Officer, which may include termination of this Contract.

f. The Contractor shall be liable for the cost of full and complete remediation and/or restoration of any Federal Project lands, Project waters, or Project works that are adversely affected as a result of such violation, and/or termination of this Contract, unless otherwise agreed to by the Contracting Officer.

g. Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provisions of this Article.

WATER CONSERVATION

29. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 (RRA) and Part 427.1 of the Water Conservation Rules and Regulations effective January 1, 1998.

EQUAL EMPLOYMENT OPPORTUNITY

30. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the

Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

31. a. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title III of the Americans with Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes require that no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the

grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

PRIVACY ACT COMPLIANCE

32. a. The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (Privacy Act) and the Department of the Interior rules and regulations under the Privacy Act (43 CFR 2.45 *et seq.*) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1261), and pursuant to 43 CFR 426.18.

b. With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in (a) above and are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

c. The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

d. The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 and amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

e. The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64 and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester.

These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as authority for the request.

PEST MANAGEMENT

33. The Contractor shall effectively control undesirable plants and animals, as defined by the Contracting Officer, on Federal Project lands, Project waters, and Project works for which the Contractor has operation and maintenance responsibility. This control shall include Contractor equipment and vehicle decontamination of reproductive and vegetative parts that may cause the spread of weeds and other pests upon completion of the work. Decontamination should be performed on the work area boundary prior to moving equipment and vehicles out of the area where work is performed. Programs for the control of these undesirable plants and animals on Federal Project lands, Project waters, and Project works for which the Contractor has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Contractor will adhere to applicable Federal and State laws and regulations, and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

MEDIUM FOR TRANSMITTING PAYMENTS

34. a. All payments from the Contractor to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of this Contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Regional Director

AINSWORTH IRRIGATION DISTRICT

By _____
President

ATTEST:

Secretary

Attachment A

**ANNUAL DISTRIBUTION WORKS CONSTRUCTION CHARGE
OBLIGATION PAYMENTS**

<u>YEAR</u>	<u>AMOUNT</u>
2007	\$167,500
2008	\$167,500
2009	\$167,500
2010	\$167,500
2011	\$167,500
2012	\$167,500
2013	\$167,500
2014	\$167,500
2015	\$167,500
2016	\$167,500